

ORIGINAL

Decision 93267 JUL 7 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for authority to assume liabilities, not to exceed \$350,000,000 in aggregate principal amount in Canadian and/or U.S. funds, as guarantor on certain promissory notes of Alberta and Southern Gas Co. Ltd.

Application 60503
(Filed April 30, 1981)

O P I N I O N

Pacific Gas and Electric Company (PGandE) requests authority, under Section 830 of the Public Utilities Code, to assume liabilities, in the aggregate principal amount of up to \$350,000,000 in Canadian and/or U.S. funds, as guarantor on certain short-term promissory notes and standby lines of credit of Alberta and Southern Gas Co. Ltd. (A&S), PGandE's wholly owned Canadian subsidiary.

Notice of the filing of the application appeared on the Commissions' Daily Calendar of May 4, 1981. No protests have been received.

According to the application, A&S is a company chartered under the laws of the Province of Alberta, Canada. A&S has an office and carries on business in the City of Calgary. Its principal function is to purchase gas from producers in Alberta, arrange for transportation of the gas by Alberta Natural Gas Company Ltd. (ANG) and

others to the international boundary where the bulk of the gas is delivered and sold to Pacific Gas Transmission Company (PGT), which in turn delivers and sells the natural gas to PGandE at the California-Oregon boundary. A&S does not own any pipeline facilities and has only nominal capitalization. Under these arrangements, PGandE obtains approximately one-third of the gas supply for its ratepayers in central and northern California.

The application indicates that A&S has currently in effect over 400 gas purchase contracts with Alberta producers for the purchase of natural gas. The majority of the purchase contracts contain clauses which require A&S to make payments to the producer in the event A&S does not request and take, if available, stipulated minimum annual volumes of gas during a contract year.

The application also indicates that A&S has negotiated amendments to the take-or-pay provisions of its gas purchase contracts with producers who supply over two-thirds of its gas volumes. The amendments are effective for the contract years of 1980-1981 and 1981-1982. They will reduce A&S's take-or-pay payments under the contracts to approximately 25% of what they would otherwise be. The result is a substantial reduction in A&S's potential take-or-pay liability.

According to the application, A&S generally has the right during the remaining term of the contract to make up deficiency gas^{1/}

^{1/} Deficiency gas represents the annual minimum volume of gas A&S is obligated to request and take, if available, less the volume actually requested.

paid for but not taken. A&S anticipates filing for extensions of its export licenses in the near future to help ensure that it will be able to make up deficiency gas as allowed in those contracts.

PGandE points out that in previous contract years, A&S has incurred take-or-pay liability. In order to satisfy its take-or-pay obligations, A&S has maintained a short-term promissory note balance of approximately \$143,000,000 as of March 31, 1981. PGandE is a guarantor on these notes under authority granted it in Decision (D.) 89674, dated November 28, 1978 in Application (A.) 58406.

A&S has attempted to minimize its take-or-pay liability within the constraints of the contracts and by seeking special marketing arrangements with other shippers. Nevertheless, PGandE indicates that A&S's take-or-pay liability is increasing with the maximum take-or-pay amount now forecasted at approximately \$290,000,000.

To meet A&S's forecasted take-or-pay liabilities, PGandE is requesting Commission authorization to enter into the same type of financing arrangements approved by this Commission in D.89674. A&S would issue and sell PGandE guaranteed short-term promissory notes in the Canadian commercial paper market. The issuance of the notes would be supported by a standby bank line of credit from the Bank of Montreal (Bank).

More specifically, A&S would issue short-term promissory notes with maturities of up to 365 days through its Canadian investment bankers. To be marketable, the securities must be unconditionally guaranteed by PGandE as to the principal amount and interest. A copy of the form of notes and guarantees is included in the application as Exhibit D.

If the funds needed to cover A&S's take-or-pay liability cannot be raised completely from the commercial paper market, A&S would utilize a standby line of credit with the Bank. The interest rate on the loan would float, depending on the type of loan, as follows:

1. Canadian - the Bank's prime rate.
2. U.S. - the Bank's base rate or London Interbank Rate plus 1/2% based on three or six months roll over basis.
3. Bankers Acceptances - Variable interest rate based on commercial paper rate, plus 1/2% per year for bank's acceptance of prime liability.

As a condition of the line of credit, the Bank requires PGandE to unconditionally guarantee (in the Bank's favor) an aggregate amount sufficient to cover all loans made under the agreement with A&S.

In D.89674, the Commission approved these same basic financing arrangements for A&S's then anticipated take-or-pay liabilities. Since the amount for which PGandE's guarantee, now needed, is larger than the amount previously authorized, PGandE will

have to execute a new guarantee in favor of the Bank in an amount up to \$350,000,000 aggregate principal amount for the total of (a) A&S's bank line of credit and (b) the promissory notes. A copy of the proposed form of guarantee to the Bank is included with the application as Exhibit E.

The use of PGandE guaranteed short-term promissory notes issued by A&S, combined with the standby line of credit, is reported to be the least costly way to finance A&S's take-or-pay obligations. Since A&S is a wholly owned PGandE subsidiary with only nominal assets, purchasers of the notes and the Bank logically look to PGandE for assurance of payment in the manner arranged under the guarantees.

PGandE's subsidiary, A&S, is directly substantially engaged in activity that assists PGandE in meeting its obligation to supply natural gas to its California service area. Through A&S, PGandE obtains approximately one-third of the gas supply needed to serve its northern and central California ratepayers. By assisting A&S in meeting its take-or-pay responsibilities, PGandE is acting to ensure A&S's ability to continue to provide a major source of PGandE's gas. This circumstance makes it appropriate for PGandE to use its credit to guarantee the liabilities of A&S in an amount up to \$350,000,000, as requested.

The Revenue Requirements Division does not object to the situating and structuring of the guarantees in Alberta, Canada. Both the Bank and A&S are Canadian entities; the proposed short-term notes

will be issued and sold in the Canadian commercial paper market; the funds advanced under the line of credit will be advanced and spent in Canada to meet Canadian obligations. Therefore, it appears appropriate to allow the guarantees to be governed by and construed in accordance with the laws of the Province of Alberta.

In its application, PGandE points out that the promissory notes and bank loans will bear interest at rates to be determined at the time of issuance. Consequently, the notes will fluctuate and at times may exceed the limitations contained in Article XV, Section 1 (Interest Rates) of the California Constitution. PGandE requests the Commission find that the California Usury Law does not apply to the proposed guarantees. For the reasons discussed in D.83411, dated September 4, 1974 in A.55080 (Southern California Gas Company), D.84929, dated September 23, 1975 in A.55839 (PGandE), and reaffirmed in subsequent Commission decisions, the Commission in exercising its authority to regulate public utility securities and evidences of debt is not restricted by the California Usury Law. (Article XV, Section 1 of the California Constitution.)

The Revenue Requirements Division has reviewed the application and has concluded that PGandE's request is reasonable.

Findings of Fact

1. PGandE obtains approximately one-third of its Canadian gas supply through A&S.

2. A&S faces substantial take-or-pay payments for gas not taken under the Canadian gas purchase contracts by which it obtains Canadian gas.

3. It is reasonable for PGandE to use its credit to guarantee A&S liabilities, up to \$350,000,000, in order to allow A&S to meet its take-or-pay obligations.

4. It is reasonable for PGandE to situate and structure the guarantees in the Province of Alberta, Canada.

5. The proposed short-term promissory notes, which may be issued by A&S and the standby line of credit between A&S and the Bank under which PGandE seeks to assume certain liabilities as guarantor, may contain interest rate provisions which from time-to-time exceed the limitations provided in Article XV, Section 1 (Interest Rates) of the California Constitution (the California Usury Law).

6. There is no known opposition to the application and no reason to delay granting the authority requested.

Conclusions of Law

1. Under the plenary powers granted to the Legislature by Article XII, Section 5 of the California Constitution, the Legislature is authorized to confer additional consistent powers upon this Commission as it deems necessary and appropriate, unrestricted by any other provisions of the California Constitution.

2. The Legislature has conferred upon this Commission the authority to regulate the creation by public utilities of all evidences of indebtedness, including the assumption by public utilities of any obligation or liability as guarantor, and to prescribe restrictions and conditions as it deems reasonable and necessary (Sections 816 et seq. of the Public Utilities Code).

3. Under the plenary powers granted to the Legislature in Article XII, Section 5 of the California Constitution, it conferred upon this Commission comprehensive and exclusive power over the creation by public utilities of all evidences of indebtedness, including the assumption by public utilities of any obligation or liability as guarantor, and the California Usury Law cannot be applied as a restriction on this Commission's regulation of such guarantees by public utilities.

4. If the usury limitation contained in Article XV, Section 1 of the California Constitution is exceeded, but the transaction is authorized by this Commission, applicant utility, its assignees, or successors in interest will have no occasion to and cannot assert any claim or defense under the California Usury Law; further, and necessarily, because of lawful execution and issuance by PGandE of the guarantees in compliance with authorization by this Commission, persons collecting interest under PGandE's obligations and liabilities as guarantor are not subject to the California Usury Law sanctions.

5. A public hearing is not necessary.

6. The application should be granted to the extent set forth in the order which follows.

The proposed security issue is for lawful purposes and the money, property, or labor to be obtained by it are required for these purposes. Proceeds from the security issue may not be charged to operating expenses or income.

The interest costs on the proposed loans will be recovered under the Canadian border pricing mechanism through an equivalent reduction in the net-back to producers and, therefore, no increase in PG&E's purchased gas costs will result.

The following order should be effective on the date of signature to enable PGandE to carry out its obligations as guarantor of the liabilities of A&S expeditiously.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company may enter into and carry out the provisions of the Guarantees with the purchasers of the short-term promissory notes of Alberta and Southern Gas Co. Ltd. and the Bank of Montreal under which the liability of Pacific Gas and Electric Company is limited to an aggregate principal amount up to \$350,000,000 in Canadian and/or U.S. funds, substantially in the form of Exhibits D and E, attached to the application.


2. Interest rates applicable to Pacific Gas and Electric Company's obligations and liabilities as guarantor under the Guarantees may exceed the maximum annual interest rate otherwise permitted under the California Usury Law, as contained in Article XV, Section 1 (Interest Rates) of the California Constitution and the Usury Law Initiative Act when and as required in the short-term promissory notes issued by Alberta and Southern Gas Co. Ltd. and the Bank of Montreal.

3. Pacific Gas and Electric Company is authorized to situate and structure the Guarantees in the Province of Alberta, Canada.

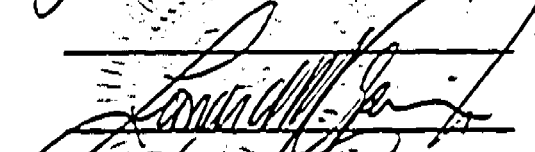
4. Neither Pacific Gas and Electric Company, nor any person purporting to act on its behalf, shall at any time assert in any manner, or attempt to raise as a claim or defense, in any proceeding, that the interest payable by Pacific Gas and Electric Company under its obligations and liabilities as guarantor exceeds the maximum permitted to be charged under the California Usury Law or any similar law establishing the maximum rate of interest that can be charged to or received from a borrower.


This order is effective today.

Dated JUL 7 1981 , at San Francisco, California.



President







Commissioners

Commissioner Richard D. Travette, being necessarily absent, did not participate in the disposition of this proceeding.